

# New Jersey State Tax News

## Spring 2001

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### NJ SAVER Rebate Applications

Applications for the 2000 NJ SAVER rebate will be mailed to homeowners over a two-week period in early May. The Division of Taxation has found that staggering the mailing of the applications makes it easier for applicants with questions about the program to get through to the Division by phone. The deadline for filing NJ SAVER rebate applications is July 2, 2001, and rebate checks are scheduled to be mailed on or before September 15, 2001.

Most eligible homeowners will be able to file their NJ SAVER rebate applications by calling the automated NJ SAVER Rebate Filing System at 1-877-658-2972 or 609-826-4288. The system will be available 24 hours a day, 7 days a week beginning May 1, 2001. On average, automated telephone filing takes about a minute and a half for most homeowners who have previously applied for the NJ SAVER rebate and whose information remains unchanged, and about three and a half minutes for those who did not file last year. Applications can also be filed online from the Division's Web site at:

**[www.state.nj.us/treasury/taxation/](http://www.state.nj.us/treasury/taxation/)**

Applications will be sent to homeowners who applied for and received a 1999 NJ SAVER rebate (or who would have received one had their homestead rebate not provided a greater benefit), as well as to individuals who built or

purchased a home between October 2, 1999 and October 1, 2000. Other individuals who have been identified as potentially eligible for the rebate will also be sent applications.

The NJ SAVER rebate program, now in the third year of its scheduled five-year implementation period, provides direct property tax relief to New Jersey residents who own, occupy and pay property taxes on a home in New Jersey that was their principal residence on October 1 of the year for which the rebate is being claimed. NJ SAVER rebates will average \$360 for tax year 2000, \$480 for tax year 2001, and \$600 for tax year 2002, when

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### Important Phone Numbers

Customer Service Ctr ..	609-292-6400
Automated Tax Info ..	1-800-323-4400
.....	609-826-4400
NJ SAVER Hotline .....	609-826-4282
Property Tax Reimbursement Hotline .....	1-800-882-6597
Speaker Programs.....	609-984-4101
NJ TaxFax .....	609-826-4500
Alcoholic Bev. Tax.....	609-984-4121
Corp. Liens, Mergers, Withdrawals & Dissolutions .....	609-292-5323
Director's Office.....	609-292-5185
Inheritance Tax.....	609-292-5033
Local Property Tax.....	609-292-7221
Motor Fuels Tax Refunds.....	609-292-7018
Public Utility Tax .....	609-633-2576

*nj saver rebate - from page 1*

the program is fully phased-in.

Homeowners are entitled to receive either a NJ SAVER rebate or a homestead rebate, whichever provides a greater benefit. For many senior citizens, the homestead rebate will be greater. This may change as the NJ SAVER rebate amount increases to its maximum. Homeowners eligible for both the homestead and NJ SAVER rebates should continue to file separate applications for each rebate to ensure that they are receiving all the benefits they are eligible for.

NJ SAVER rebates are exempt from New Jersey gross income tax, and a homeowner does not have to report the amount of the rebate on the New Jersey resident income tax return. However, the IRS has advised that for Federal income tax purposes, a taxpayer who itemized deductions and claimed a deduction for property taxes on the 1999 Federal income tax return must report the amount of any property tax rebate received during 2000 as income on the 2000 Federal return. Taxpayers who used the standard deduction, or who itemized but did not claim a deduction for property taxes, do not have to report a property tax rebate as income.

New Jersey taxpayers who must include the amount of their property tax rebate as income on their Federal return should report the rebate on Form 1040 at Line 21, Other Income, and describe it as "property tax rebate."

For further information about the NJ SAVER rebate program call the NJ SAVER Rebate Hotline at 609-826-4282. Division repre-

sentatives are available from 8:30 a.m. to 4:30 p.m., Monday through Friday (except holidays). □

## **Protests of Reck v. Director Decision**

The Division of Taxation has appealed the *Reck v. Director, Division of Taxation*, 18 N.J. Tax 598 (March 2000) Tax Court decision regarding the treatment of Keogh contributions and is adhering to its original position on this issue consistent with the Tax Court's ruling in *Dantzler v. Director, Division of Taxation*, 18 N.J. Tax 490.

Many taxpayers have filed amended income tax returns based upon the *Reck* Tax Court decision in order to request refunds for their Keogh contributions previously filed and paid. Other taxpayers have been assessed and billed by the Division for deficiencies created from deducting the Keogh from income or from refunds already processed to the taxpayer which must be repaid.

The Director is offering an alternate protest and appeal process for the benefit of those taxpayers filing protests with the Conference and Appeals Branch for denials of requested Keogh refunds or redeterminations of assessed deficiencies. If the *only* protested issue involved is whether or not Keogh plan contributions are deductible when computing individual or partner's distributive share of partnership income, the taxpayer may be able to take advantage of the alternate process of the choice of either a Closing Agreement or a regular Conference. If the original protest does not indicate a prefer-

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**taxation@tax.state.nj.us**

The *State Tax News* is also available on the Division of Taxation's Web site at:

**[www.state.nj.us/treasury/taxation/](http://www.state.nj.us/treasury/taxation/)**

This publication is designed to keep taxpayers, tax practitioners and the general public informed of developments, problems, questions and matters of general interest concerning New Jersey tax law, policy and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

**Division of Taxation Director:**  
Robert K. Thompson

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ence for a Closing Agreement, the taxpayer will receive a letter from the Conference and Appeals Branch advising of the alternate process and requesting a response within 15 days. The protest will be routed through the normal conference procedures if a response is not received.

Taxpayers protesting issues in addition to Keogh contributions must follow the regular conference process and resolve and/or concede the other issues. Taxpayers protesting non-Keogh pension plan contributions must also follow the regular process. The protest will be acknowledged and moved to the unassigned backlog pending the scheduling of a conference. After the conference, a Final Determination will be issued which will provide further appeal rights to the Tax Court of New Jersey.

Taxpayers entering into a Closing Agreement will be bound by the court of last appeal's final decision of *Reck v. Director, Division of Taxation*, 18 N.J. Tax 598, which is currently pending before the Superior Court of New Jersey, Appellate Division, Docket Number A-005379-99T3. The Conference and Appeals Branch will maintain the Closing Agreement files until said final decision.

Additional information regarding the Closing Agreement is available on the Division of Taxation's home page at:  
[www.state.nj.us/treasury/taxation/](http://www.state.nj.us/treasury/taxation/)  
□

## **SALES AND USE TAX** ***Spring Cleaning***

With the improved weather comes the annual ritual of spring cleaning. Window cleaning, clearing out the garage or basement, painting, and other household cleaning are just some of the work to be done.

With the busy schedules kept by New Jersey families, more and more service companies have sprung up to provide these services. Following is a list of some of the most common spring maintenance projects performed by these companies and an explanation of how sales tax is applied.

### **Examples of Maintenance Services:**

Mowing Lawns .....	Taxable
Trimming Trees .....	Taxable
Painting:	
Interior or Exterior .....	Taxable
Pest Control Treatment .....	Taxable
Pest Control Inspections ...	Exempt
Cleaning Services	
(except carpet cleaning) ..	Taxable
Power Washing .....	Taxable
Trash Removal	
(non-contractual) .....	Taxable
Windows .....	Taxable
Carpet Cleaning .....	Exempt

When contractors perform maintenance services, their bills should separately state the charges for materials and for labor. The contractor charges sales tax on the labor portion of the bill. The contractor may not charge you sales tax on the cost of the materials and supplies used for the job. However, if the contractor charges you a lump sum for the maintenance service without separating the charge for materials from the charge for labor, you are required to pay the sales tax on the total amount of the bill.

Maintenance services preserve the existing condition of your real property, but do not rise to the level of a capital improvement. A capital improvement means an installation of tangible personal property which increases the capital value or useful life of the real property (land or building). The item(s) installed must be permanently attached to real property. If the work performed on your real property results in a capital improvement, the contractor may not collect sales tax from you on any charges (materials or labor), provided you give the contractor a properly completed Certificate of Capital Improvement (Form ST-8). This form is available by calling the Division's Customer Service Center (609-292-6400), from the Forms Request section of the Automated Tax Information System (1-800-323-4400), by stopping in at one of our field offices, or on the Division of Taxation Web site at:

[www.state.nj.us/treasury/taxation](http://www.state.nj.us/treasury/taxation)  
□

## **CORPORATION TAX** ***Notice of Business Activities Report***

The Corporation Business Activities Reporting Act ("Act") requires the annual filing of a Notice of Business Activities Report by a foreign corporation (i.e., not incorporated in the State of New Jersey). Every foreign corporation not filing pursuant to the New Jersey Corporation Business Tax Act (N.J.S.A. 54:10A-1 et seq.) or the New Jersey Corporation Income Tax Act (N.J.S.A. 54:10E-1 et seq.) but that carries on various

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activities in the State or that receives in excess of \$25,000 income from New Jersey sources is required to file such report.

Every foreign corporation subject to the Act (N.J.S.A. 14A:13-14, et seq.) must file an annual Notice of Business Activities Report (Form CBA-1). The reports are required for calendar or fiscal accounting years or parts thereof. The report must be filed on or before the fifteenth day of the fourth month after the close of such calendar or fiscal accounting year.

The failure of a foreign corporation to file a timely report may prevent the use of the courts in this State for all causes of action that may arise at any time prior to the end of the last accounting period for which the corporation failed to file a required timely report.

Pursuant to confidentiality provisions of the State Tax Uniform Procedure Law (N.J.S.A. 54:50-8), only the defendant against whom an action is instituted in any New Jersey Court by a foreign corporation is entitled to know whether the plaintiff foreign corporation has filed such report.

All requests to the Division of Taxation for information as to whether a corporation filed a report must be in writing and include:

- A copy of the complaint and/or summons served upon the defendant (including defendant's and plaintiff's business name and complete mailing addresses).
- If this request is made by anyone other than the defendant, then that party must be a party

to the court action, or either a Power of Attorney form or a letter (on corporate or business letterhead) signed by a corporate officer or principal of the business must be attached.

The Notice of Business Activities Report is also used to aid the Division of Taxation in determining whether or not a foreign corporation has "nexus" in New Jersey. The Notice of Business Activities Report asks questions seeking "yes" or "no" responses regarding specific corporate activities in New Jersey. If a question is answered in the affirmative, the taxpayer is requested to supply the date the activity began. Although the report has proved to be a successful tool in the discovery of new taxpayers "doing business" in New Jersey, it also prevents corporations from being caught unaware that they have a tax filing responsibility. □

## **Cable Television Service Providers**

The New Jersey Sales and Use Tax Act provides an exemption for the purchase of machinery, apparatus or equipment with a useful life of greater than one year, and for use directly and primarily in the production or transmission of radio or television information, by:

- Commercial broadcasters operating under a broadcasting license issued by the FCC (effective 1/5/96); or
- Providers of cable/satellite television program services (effective 6/1/96).

The statutory exemption for providers of "cable/satellite television program services" is applicable to equipment used in *producing cable*

*television programming or in transmitting or distributing cable television programming to cable television service providers.* It does not apply to equipment purchased or used by cable television service providers that receive programming from other sources, which is then redistributed to cable television subscribers and customers. Cable television service providers are those companies that are subject to the provisions of N.J.S.A. 48:5A-1 et seq.

An Exempt Use Certificate (Form ST-4) must be provided to the vendor as evidence of the exempt nature of the sale of qualified equipment. The statutory provision to be referenced on the ST-4 is N.J.S.A. 54:32B-8.13(e). □

## **NJ Estate Tax**

In addition to the transfer inheritance tax, the State of New Jersey imposes an estate tax on the estates of resident decedents. The tax is triggered when there is a Federal estate tax liability. The New Jersey estate tax is designed to absorb any portion of the tax credit allowable for state death taxes under the Federal estate tax law that is not fully taken up by the aggregate amount of all death taxes paid to any state, U.S. territory or the District of Columbia. The New Jersey estate tax does not increase the estate's overall tax liability. Estates that are partially or fully exempt from the New Jersey transfer inheritance tax may be subject to the New Jersey estate tax.

The estate tax is determined by subtracting the amount of inheritance, legacy, and succession taxes paid to this State and elsewhere

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from the allowable Federal credit. The tax liability is reported by the filing of the New Jersey Estate Tax Return (Form IT-Estate) which may be obtained by writing to the Inheritance and Estate Tax Section of the Individual Tax Audit Branch, PO Box 249, Trenton, New Jersey 08695-0249 or calling 609-292-5033 or 609-292-5035.

The New Jersey estate tax obligation is in no way discretionary on the part of the taxpayer. It may not be satisfied by payment of additional Federal estate taxes in lieu of claiming the allowable state death tax credit on the Federal estate tax return.

For estates of decedents dying on or after March 1, 1992, interest accrues at the rate of 10% per annum

on any New Jersey estate tax not paid within nine months of a decedent's date of death unless an extension of time in which to file the Federal estate tax return is granted by the Federal government. The Director of the Division of Taxation may then reduce the interest chargeable to 6% per annum for the period until the expiration of the Federal extension.

New Jersey law requires that a copy of the Federal estate tax return be filed with the Individual Tax Audit Branch within 30 days after the filing of the original return with the Federal government. Also, a copy of any communication from the Federal government making any final change in the return, or confirming, increasing, or reducing the tax shown to be due must be filed with the Branch within 30 days of receipt. □

## ***Interest 12.50% for Second Quarter***

The interest rate assessed on amounts due for the second quarter of 2001 is 12.50%.

The assessed interest rate history for the last eight quarters is listed below.

<b>Effective Date</b>	<b>Interest Rate</b>
7/1/99	10.75%
10/1/99	10.75%
1/1/00	11.50%
4/1/00	11.50%
7/1/00	11.50%
10/1/00	11.50%
1/1/01	12.50%
4/1/01	12.50%

## ***Web Site Redesign to Debut in Spring***

The New Jersey Division of Taxation's Web site will soon have a new look, and much more. The long anticipated redesign of our site will be debuting shortly after tax season in the spring of 2001. In addition to our new design, we have incorporated enhanced features and better Web site accessibility. These new features include:

**Ease of Navigation.** Taxpayers may reach any page in the Division's site from anywhere in the site via the arched navigation bar.

**Content Sensitive Menus.** The arched navigation bar also provides "drop-down" menus to related links within that particular area of interest.

**Improved Graphics.** As a part of our new look, the Division has moved away from over-the-counter graphics and has incorporated custom photos of various places and scenes from New Jersey.

**Scrolling "Hot News."** The Hot News of the day will appear on a scrolling menu on the home page and will be updated daily. Come and take a look at what's hot!

**Fill-in Forms.** Last year, taxpayers and practitioners were able to complete their corporation business tax forms online. Completed forms could then be printed and sent to the Division. The response to these new "fill-in" forms was outstanding. In response to this, our fill-in forms have been expanded to include all reproducible forms in every tax.

**Minimal Scrolling.** Taxpayers will no longer need to use their browser scroll bar to view the pages. Through improved design and use of Dynamic HTML, each page will have an internal content scroll area when necessary.

**Improved Site Search Results.** Although our search engine has not changed, we have enhanced our search ability. Through the use of keywords and metatags, taxpayers and practitioners will be able to receive more documents and pages appropriate to their search.

**Standard Navigational Links.** Each page includes the same standard navigational links found on the State's Web site.

**Compliance with the Americans with Disabilities Act.** The Division's goal is to successfully

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*web site redesign - from page 5*

service all taxpayers and practitioners. In keeping with this philosophy, we have incorporated several enhanced features into our redesign:

- *Alternate tags for images.* All images will have text "tags" which will explain what the image is. In the event the user is having the page read to them, they will hear an explanation of the image.
- *Text version of all pages.* Each page will have a text only version to accommodate taxpayers and practitioners with Web browsers incapable of handling dynamic HTML or those individuals with slower processors.

We are looking forward to the unveiling of our new site. Please take a look and then complete our new online survey and tell us what you think. □

## **Landfill Developer Reimbursed**

The Advance Group was the first developer to execute a Redevelopment Agreement under the Municipal Landfill Site Closure, Remediation and Redevelopment Act. The agreement was executed on May 18, 1998, and the project encompassed the construction of a mall on a former municipal landfill. The mall houses numerous retail stores and restaurants.

Pursuant to the Act the developer was entitled to recover 75% of its closure costs. These costs amounted to \$1,076,449. The developer was therefore entitled to receive the sum of \$807,336.75.

The vendors at the mall commenced business during the period from August 1998 through May 1999. Since commencement of business, the total amount of new sales taxes generated from the site have amounted to \$1,497,445.17. A reimbursement check in the amount of \$807,336.75 was forwarded to the developer in February 2001. □

## **Small Business Workshops**

The New Jersey Division of Taxation and the IRS periodically conduct free workshops designed to help small businesses better understand their tax obligations. These seminars are held from 9 a.m. to 4 p.m. at various locations throughout the State. The New Jersey portion of each workshop is presented in the afternoon and covers the following topics:

- Types of business ownership and the tax consequences of each type
- Registering with the State of New Jersey
- Employer responsibilities
- Reporting business income
- What's taxable and what's exempt from New Jersey sales tax
- Filing sales and use tax returns

Seating is limited so if you plan to attend one of the spring sessions listed below, please contact the IRS by fax at 973-645-6691 to register.

For additional information on these and other specialized workshops, call The Division of Taxation's Technical Education Unit at 609-984-4101.

### **Spring 2001 Schedule**

April 26	Forked River
April 27	Camden
May 3	Randolph
May 4	West Windsor
May 11	Westfield
June 1	Egg Harbor
June 15	Camden
June 20	Jersey City
June 21	Paramus
July 12	Union □

## **LOCAL PROPERTY TAX Tax Assessor Certificates**

The Tax Assessor Examination is held in accordance with the Assessor Certification and Tenure Act, which requires that anyone taking office as a tax assessor after July 1, 1971, must hold a tax assessor certificate.

Six individuals passed the examination for the tax assessor certificate held on September 23, 2000, and were issued certificates on January 1, 2001. They are:

**Bergen County:** Samuel A. Heller, Fair Lawn Borough; Joseph P. Leto, III, Lodi Borough.

**Burlington County:** Kwabena Owusu-Banahene, Ph.D., Mount Laurel Township.

**Essex County:** Edward Marashlian, North Caldwell Borough.

**Mercer County:** Jeffrey D. Gordon, Ewing Township.

**Monmouth County:** Donald M. Moliver, Rumson Borough.

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The next examination is scheduled for September 22, 2001, at the Richard J. Hughes Justice Complex, 25 Market Street, Trenton, New Jersey. The filing deadline is August 23, 2001. A fee of \$10.00 must accompany the completed applications. For applications or additional information, please contact Mary Ann Miller at 609-292-7813. □

## **LOCAL PROPERTY TAX Tax Assessors' Calendar**

### **April 1–**

- Deadline for appeals of assessed valuations to County Tax Boards by taxpayers and taxing districts and for appeals of assessed valuations over \$750,000 to Tax Court. Deadline extended to 45 days from date the taxing district completes bulk mailing of notifications of assessment, whichever is later.
- If appeal or complaint is filed

April 1 or during the 19 days next preceding April 1, taxpayer or taxing district has 20 days from date of service of appeal petition or complaint to file cross petition with County Tax Board or counterclaim with Tax Court, as appropriate.

- Property Tax Deduction Disallowance Notice, Form PD4, for nonfiling Post-Tax Year Statement or income over \$10,000 sent by collector.
- County budgets certified to County Tax Boards.
- County Boards of Taxation to establish the percentage level of taxable value of real property.

### **April 10–**

- Copy of County Tax Board resolution of real property taxable value percentage level mailed to assessors, municipal clerks, and Director, Taxation.

*assessors' calendar - from pg. 7*

### **April 15–**

- Form SR-3A filed with Property Administration by County Tax Board.

### **May 1–**

- Assessor shall identify and certify to County Tax Board residential properties.
- County Tax Boards receive certification of REAP aid due to each local unit for that tax year.
- Extended deadline for filing (with the collector) Annual Post-Tax Year Statement, Form PD5, where taxpayer's illness or medical problem prevented the required March 1 filing.

### **May 20–**

- Table of Aggregates completed by County Tax Board from assessors' Tax Duplicates and Taxation Director's certification of 2nd class railroad property. A tax credit rate to be calculated by dividing the total REAP aid by total taxable value of residential property.

- General tax rates certified by County Tax Boards.

### **May 23–**

- Table of Aggregates signed and transmitted within three days by County Tax Board to Taxation and Local Government Services Directors, State Auditor, municipal clerks and the clerk of board of freeholders.

### **June 1–**

- Assessors' Property Tax Deduction Disallowance Notices, Form PD4, sent.
- Repayment of disallowed prop-

## **Pay NJ Taxes By Credit Card\***



- **Personal and Fiduciary Income Tax and Estimated Payments**
- **Sales and Use Tax**
- **Deficiency payments for Corporation Business Tax Sales and Use Tax Gross Income Tax Withholding Personal Income Tax**

**By Phone — 1-800-2PAYTAX**  
**Through the Internet — [www.officialpayments.com](http://www.officialpayments.com)**

### **For more information:**

<http://www.state.nj.us/treasury/revenue/> **OR** <http://www.state.nj.us/treasury/taxation/>  
\* Fee of 2.5% of tax payment applies.

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erty tax deductions previously granted required. Nonpayments become liens.

- Collectors' Property Tax Deduction Notices, Form PD4, for nonfiling Post-Tax Year Statement or income over \$10,000 for taxpayers granted medical extension sent.

#### **June 3—**

- Corrected Tax Duplicates sent by County Tax Board to tax collectors for billing purposes.

#### **June 5—**

- Certification of Property Tax Deductions, Form PD65.10, and Certification of Veterans' Deductions, Form VE-WVE-1, completed and forwarded by collector to County Tax Board.

#### **2nd Monday in June—**

- Assessors' report, description, and valuation of railroad property not used for railroad purposes to Director, Taxation.

#### **June 15—**

- County Tax Board to certify to Director, Taxation, total number and dollar amount summary of senior citizen, disabled, surviving spouse and veterans' property tax deductions allowed and disallowed by each district. □

## **Criminal Enforcement**

Criminal Enforcement over the past months included:

- On September 27, 2000, Anthony Foti of Brick, New Jersey, was sentenced to five (5) years probation and ordered to pay restitution of \$76,184, plus penalties and interest in the amount of \$23,816, to the State

of New Jersey. The sentencing is in response to Mr. Foti's guilty plea to an accusation of collecting but not remitting the sales tax from his business, An-Jo Car Company, Inc., of Toms River. The investigation of Mr. Foti's used car business covered the period of April 1, 1996 through March 31, 1999. Mr. Foti paid \$10,000 at the time of sentencing with the balance of restitution to be paid over the course of the probation period.

- On October 4, 2000, at Newark International Airport, U.S. Customs Inspectors alerted the Office of Criminal Investigation about a shipment of cigarettes from the United Arab Emirates. An examination of the cigarettes found them to be unstamped imports manufactured in England. A total of 399 cartons were seized by Customs, in cooperation with the New Jersey Division of Taxation, as they did not bear the Federal Trade Commission and U.S. Food and Drug Administration required markings for importation into the United States.
- On October 18, 2000, David B. Cohen of Cherry Hill, New Jersey, was the subject of a sixty-eight (68) count indictment in Camden County. Mr. Cohen, a corporate officer of Payroll Masters, Inc., was charged with failing to turn over Federal and State tax withholdings in excess of \$600,000 that were entrusted to his payroll service. In addition, Mr. Cohen was charged with failing to file New Jersey gross income tax returns for the years 1998 and 1999. This case was presented by the Camden County Prosecutor's Office.

- On January 5, 2001, U.S. District Judge Robert Payne sentenced Ahmed O. Mohammed in the Eastern District of Virginia for interstate contraband cigarette trafficking and other related charges. The prosecution is based on Mr. Mohammed's arrest by the New Jersey Office of Criminal Investigation with substantial assistance from the New York City Department of Finance, Office of Tax Enforcement, and from criminal information filed as a result of a Maryland arrest. The New Jersey arrest took place in June 2000 in Fairview, New Jersey, at a storage facility where Mr. Mohammed kept the 1,166 cartons of contraband cigarettes. The defendant was sentenced to eighteen (18) months incarceration, three (3) years of supervised release thereafter, with a specific condition of supervised release that the defendant be turned over to the U.S. Immigration and Naturalization Service for deportation to Sudan. The defendant was also ordered to pay a special assessment of \$200, restitution to the State of New Jersey in the amount of \$202,546, and restitution to the State of Maryland in the amount of \$8,514. In addition, 1,166 cartons of cigarettes and \$4,744 in cash were forfeited by the defendant to the State of New Jersey.
- On October 25, 2000, Paul Lopapa of Watchung, New Jersey, was indicted by a State Grand Jury for failure to file New Jersey gross income tax returns for the years 1996, 1997, and 1998. The joint investigative efforts of the Division of Criminal Justice

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and the Division of Taxation's Office of Criminal Investigation determined that Mr. LoPapa failed to report total taxable income of \$155,185 for the three years indicated. He was also indicted for failure to pay gross income tax in the amount of \$5,299, which was due on the above-referenced taxable income. The investigation determined that Mr. LoPapa had generated the above-mentioned unreported income through his real estate company known as Castle Rock Real Estate.

- On October 25, 2000, James D. Joyce entered a guilty plea to two (2) counts of a State Grand Jury indictment that had been handed down on July 23, 1991. Mr. Joyce became a fugitive prior to the indictment for securities fraud, in which investors were bilked out of nearly two million dollars (\$2,000,000), and failure to file New Jersey gross income tax returns for the years 1987 and 1988. He was arrested in Phoenix, Arizona, last year, where he was working as a cook in an airport cafeteria. Mr. Joyce had lived in the Cayman Islands and Texas prior to his arrest. Sentencing in this matter is scheduled for January 2001.
- On November 13, 2000, two Pennsylvania corporations and their corporate officers entered guilty pleas in Mercer County Superior Court, waived presentence reports, and were sentenced under the terms of a plea agreement. The two corporations, Pratt Temporaries, Inc. and Employer's Management Group, Inc., both of Fort Washington, Pennsylvania, operated a temporary employment

service business in New Jersey known as London Personnel Service. The corporations each plead guilty to a one (1) count accusation of failure to turn over taxes withheld (second degree) in excess of \$75,000 for New Jersey gross income tax withheld from employees pay during the years 1993 through 1999. Prior to the plea, the corporations made full restitution of almost one million dollars (\$1,000,000) in withholding taxes. William D. Black, Jr., the Vice President of the corporations, also entered a guilty plea to one (1) count of failure to turn over taxes withheld (third degree) in excess of \$32,000 for the year 1995. He was sentenced to a four-year term of probation. Robert S. Brown, the President of the corporations, entered a guilty plea to a one (1) count accusation of failure to file New Jersey gross income tax returns for the years 1995 through 1998, and was sentenced to a four-year term of probation. The New Jersey gross income tax returns were filed prior to the plea. Both corporations and the responsible corporate officers executed a consent judgment for interest that is due in excess of \$318,000, which will be paid within three years.

- On November 17, 2000, a resident of the State of New Jersey was stopped at the U.S. Immigration Station at Laredo, Texas/Mexico Border. U.S. Border Patrol Narcotics K-9 "hit" on a spare tire mounted under the bed of the rented pickup truck the subject was driving. Border Patrol Agents lowered the tire and found 494,460 counterfeit New Jersey

cigarette tax stamps concealed inside. The subject was arrested by the U.S. Border Patrol Agents and turned over to the FBI in cooperation with the New Jersey Division of Taxation's Office of Criminal Investigation, and was charged by the U.S. Attorney's Office with violating Title 18 U.S.C., Forgery.

- On December 12, 2000, a State Grand Jury handed up a thirty-five (35) count indictment against seven people on charges that they defrauded about ten million dollars (\$10,000,000) from twenty-five (25) victims in a bogus investment scheme. A State Grand Jury indicted the following targets of tax evasion: Jeffrey Burd, Edison, New Jersey, was charged with failure to file New Jersey gross income tax returns for the years 1998 and 1999 (2 counts); Kevin Bradley of Edison, New Jersey, was charged with failure to file New Jersey gross income tax returns for the years 1998 and 1999, and failure to file corporation business tax returns for Corporate Management Services for the years 1998 and 1999 (4 counts); Byron Jackman of Irvington, New Jersey, was charged with failure to file a New Jersey gross income tax return for the year 1998, and failure to file corporation business tax returns for Metropolitan Institute of Network Technology for the years 1998 and 1999 (3 counts); John Vitale, Jr. of Gladstone, New Jersey, was charged with failure to file corporation business tax returns for Access Entertainment for the years 1998 and 1999, and failure to register a

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business (3 counts). The thirty-five (35) count indictment also charged the above targets with theft by deception, money laundering, and misconduct by a corporate officer. The investigation determined that the above-referenced tax evasion counts represent a total of \$598,000 of tax due on total unreported income of \$9,364,000 for the combined years 1998 and 1999. The New Jersey Division of Taxation Office of Criminal Investigation, the New Jersey Division of Criminal Justice, and the Hudson County Prosecutor's Office investigated the case.

- Eighty-three (83) complaints alleging tax evasion were evaluated from October to December 2000 in the Office of Criminal Investigation.
- From October to December 2000, fifty-one (51) charges were filed in court on thirteen (13) cases for violation of the Cigarette Tax Act including possession of 637.5 cartons of contraband cigarettes, valued at \$22,312.50, resulting in eleven (11) arrests. □

## **Tax Briefs**

### **Corporation Business Tax**

**Receipts Fraction and Over-the-Road Haulers** — The Division responded to a question about the calculation of the New Jersey receipts fraction in the case of long-distance hauling. The rule is found at N.J.A.C. 18:7-8.10(c) 4.iii, and includes an example. Conceptually it has two parts that must be calculated in order to arrive at the numerator of the receipts fraction. First, the fraction of revenue miles in New Jersey over revenue miles

everywhere is multiplied by the total freight revenues; and that result is multiplied by a fraction which is the long-distance hauling costs over the sum of local pick up and delivery costs and terminal operation costs plus long-distance hauling costs. This result is then added to a second amount.

The second amount is calculated as follows: The total freight revenues are multiplied by a fraction which is the consignments (i.e. revenue from deliveries) to points in New Jersey over total freight revenues. That result is multiplied by local pick up and delivery costs and terminal operating costs over local pick up and delivery costs and terminal operating costs plus long-distance hauling costs.

The sum of the products of paragraph one and paragraph two are considered to be the receipts from services performed in New Jersey. That amount is divided by the receipts from everywhere to produce the receipts fraction for use in the allocation factor.

**Sales of Assets** — The Division responded to a question asking whether or not income from the sale of a business is to be included in the apportionment factor for the company's New Jersey corporation business tax return. The largest portion of the sale of assets is the sale of good will.

In general, income generated as the result of sale of assets that are located in New Jersey would be included in calculating the apportionment factor, and would specifically be included in the numerator of the receipts fraction. In this case the good will was integrally related to the business conducted in New Jersey (the com-

pany had a 97 percent allocation factor for its prior year) and, therefore, would be included.

In this case, however, this taxpayer may not be eligible to apportion income. As described in the inquiry, the office in Delaware may not be considered a bona fide office for purposes of allocation unless it meets the requirements of being a "regular place of business" N.J.A.C. 18:7-7.2. This includes having an employee in attendance during regular business hours performing significant duties related to the business of the taxpayer.

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## 2000 TAX LAWS

CH.	DATE	SYNOPSIS	TAX*	BILL
9	3/30/00	Increases the annual property tax deduction from \$50 to \$250 for certain veterans and their surviving spouses. The increase will be phased-in over four years to \$100 in calendar year 2000, \$150 in calendar year 2001, \$200 in calendar year 2002, and \$250 in calendar year 2003 and thereafter.	LPT	S-215
12	4/6/00	Establishes the "New Jersey Insolvent Health Maintenance Organization Assistance Fund Act of 2000" providing for payment of certain individual and provider claims against HIP Health Plan of New Jersey, Inc. and American Preferred Provider Plan, Inc.	CBT	ACS for A-1890 and A-1605
29	6/16/00	Clarifies law with regard to commissions of executors of estates.	TIT/ET	S-952
48	6/30/00	Eliminates possible price-driven rate increases in petroleum products gross receipts tax and sets tax rate at the current minimum rate floor of 4 cents per gallon.	PPT	A-2522
80	8/14/00	Establishes a New Jersey Earned Income Tax Credit.	GIT	A-40
132	9/21/00	Provides for funding to an existing statewide, nonprofit, energy assistance organization that helps needy families pay energy bills. Also creates the Unclaimed Utility Deposits Trust Fund to hold unclaimed utility deposits.	MIS	1814 (1R)
156	11/16/00	Phases out the petroleum products gross receipts tax for fuel used to generate certain electricity.	PPT	A-857
161	12/7/00	Enacts the "Uniform Partnership Act (1996)."	MIS	A-1140 (1R)

### \*Legend for 2000 Tax Laws

ABT = Alcoholic Beverage Tax	LPT = Local Property Tax
ACC = Atlantic City Casino Control Commission	MFT = Motor Fuels Tax
ALL = All Taxes Administered by the Division	MIS = Miscellaneous
CBT = Corporation Business Tax	PUT = Public Utility Taxes
CIG = Cigarette Tax	SCC = Spill Compensation & Control Tax
CMC = Cape May County Tourism Sales Tax	S&U = Sales and Use Tax
FBT = Financial Business Tax	TPT = Tobacco Products Tax
GIT = Gross Income Tax	TIT/ET = Transfer Inheritance & Estate Tax
IPT = Insurance Premiums Tax	PPT = Petroleum Products Gross Receipts Tax
LIT = Litter Control Tax	

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## Gross Income Tax

### ***No Surcharge on a Deemed Distribution of Federally Qualified Employee Retirement Plan Loan in Default***

— A taxpayer who borrowed from his Federally qualified employee retirement plan, and then defaulted on that loan asked about the taxability of the deemed distribution and if the Division would impose a surcharge on him.

For New Jersey purposes, pursuant to N.J.S.A. 54A:5-1(j), amounts distributed or withdrawn from an employee trust that were attributable to contributions to the trust (which were previously excluded from gross income) are taxable for New Jersey gross income tax purposes. This means that deemed distributions from a Federally qualified employee retirement plan are given the same treatment as individual retirement accounts in that New Jersey income tax liability is calculated only on amounts distributed in excess of actual contributions.

The New Jersey tax rate is determined in accordance with N.J.S.A. 54A:2-1 and contains no additional tax surcharge for a deemed distribution. Also, the fact that a taxpayer paid a surcharge on the deemed distribution for Federal purposes does not reduce taxable income for New Jersey purposes.

### ***State Income Taxation of Waterway Workers***

— Recently, P.L. 106-489 was signed into law preempting the state taxation of wages earned by interstate waterway workers. This Bill provides that a licensed pilot or other worker “on a vessel operating on the navigable waters of more than one State” shall be subject to the

income tax laws only in the state in which he/she resides.

New Jersey’s current policy, as stated in the *New Jersey State Tax News*, April 1993 issue, is that income attributable to a nonresident seaman’s employment on ships operating exclusively between New Jersey ports and foreign ports, or ports of other states, is not considered to be New Jersey source income. Also, a seaman who is in New Jersey simply because his ship has entered a New Jersey port for the purpose of foreign or interstate trade is not subject to the gross income tax for income earned during that period. Residents are taxed on their full income no matter where earned.

Thus, P.L. 106-489 does not change the New Jersey gross income taxation of an interstate waterway worker.

## Sales and Use Tax

***Golf Course Sales*** — The Division received an inquiry concerning the application of sales tax to various charges made by a golf course in New Jersey and responded as follows:

1. Membership Dues — Exempt from tax.
2. Greens Fees — Exempt as admission to a facility where the person will be a participant in a sporting activity. N.J.S.A. 54:32B-3(e)(1).
3. Golf Cart Fees — Taxable as a rental of tangible property. N.J.S.A. 54:32B-3(a).
4. Lessons — Exempt from tax as personal service transactions.
5. Pro Shop Merchandise — Articles of clothing that are

adaptable for everyday use such as golf shirts, pants and hats are exempt; however, articles of clothing that are designed for use during a sporting activity, such as golf shoes, are subject to tax. N.J.A.C. 18:24-6.1 et seq. Most other items sold in a pro shop are taxable as the sale of tangible property.

6. Golf Club Rental — Taxable as a rental of tangible property. N.J.S.A. 54:32B-3(a).
7. Driving Range Golf Ball Fee — Since the charge includes entrance to the range, it is treated as an exempt admission to a sporting facility where the customer is to be a participant. N.J.S.A. 54:32B-3(e)(1).
8. Food and Beverages — Taxable if sold for on-site consumption. N.J.S.A. 54:32B-3(c).
9. Entertainment — Any admission charge or cover charge to a place of amusement is subject to tax. N.J.S.A. 54:32B-3(e)(1).

***Aerial Spraying on Farms*** — N.J.S.A. 54:32B-8.16, the statutory provision governing the farming use exemption from sales and use tax, was amended effective January 6, 2000. P.L. 1999, c.314. Prior to the amendment, the exemption did not apply to any services. However, the amendment extended the exemption to “production and conservation services” sold to a farmer if they are used “directly and primarily in the production, handling, and preservation for sale of agricultural or horticultural commodities at the

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farming enterprise of that farmer.”

The aerial spraying of fertilizers, pesticides, or cover crop seeds on a farmer’s crops is an exempt service, assuming that it is used directly and primarily for one of the exempt purposes identified in the statute. N.J.A.C. 18:24-19.2; N.J.A.C. 18:24-19.4(c)4. The farmer should present the service provider with a properly completed Farmer’s Exemption Certificate (Form ST-7) to support the claimed exemption.

**Fireworks Display** — The service of producing a fireworks show is not subject to sales and use tax. The fireworks service provider is not deemed to be selling the fireworks materials themselves. Instead, the materials are used in order to perform a nontaxable service. Therefore, the fireworks service provider is liable for sales tax if the materials are purchased in New Jersey, or compensating use tax if materials purchased without payment of sales tax are used in New Jersey.

**Paint Your Own Ceramics** — The Division responded to an inquiry regarding the sales and use tax collection and payment obligations of a paint-your-own ceramics and pottery studio, thus:

1. Retail sales to a customer of pre-made ceramic items or of the supplies needed to decorate them are taxable. N.J.S.A. 54:32B-3(a).
2. When the studio charges the customer an hourly fee for use of the studio, including the right to use necessary supplies, the fee charged is not taxable to the customer. In this situation, the

studio is liable for the sales or use tax on the ceramic pieces, tools and supplies provided to customers who use the studio.

3. Charges for classes are not subject to sales tax. If ceramics pieces and supplies are provided as part of the class, they are taxable to the studio, not to the student. If they are sold to the students, for prices separate from and in addition to the class fee, then they are taxable instead to the student.
4. Charges for parties are nontaxable. The studio (not the customer) is liable for sales or use tax on the supplies.
5. Discount coupons are treated as “vendor discounts.” Customers should be charged sales tax on the reduced price for a taxable item, after the discount is subtracted from the price. N.J.A.C. 18:24-1.4. The studio is liable for sales or use tax on any taxable items given away free.

**Shop Supplies** — Automobile dealers, car repair mechanics and auto body shops are required to pay sales tax on the various tools and shop supplies which they use or consume in their business but which, unlike paint or new filters, do not become part of their customers’ vehicles. N.J.S.A. 54:32B-3(a); 54:32B-2(e). They are deemed to be the retail purchasers of these items. Generally, their expenses in purchasing these items are treated as part of their overhead (like real estate rental, employee salaries, office supplies, phone lines, etc.) and are only indirectly reflected in the fees for their services or the markups that they charge for parts or items sold as is. However, if instead they choose to

itemize an explicit “shop supply” fee on a customer’s bill, doing so will not make this portion of the bill nontaxable. The shop supply fee will be viewed as simply part of their charges for taxable services or for taxable parts, paints or fluids resold to the customer. The full charge will therefore still be subject to sales tax.

### **Federal Subscriber Wire Charges**

— Although telecommunications service providers may choose to separately itemize the Federal subscriber wire charges, these amounts billed to customers simply reimburse the service providers for a Federal tax expense incurred by the provider in order to provide the service to the subscriber. The subscriber line charges itemized on a customer’s bill are treated as part of the price charged for the taxable service. Thus, they are part of the taxable “receipt” within the meaning of N.J.S.A. 54:32B-2(d). Specifically, excise taxes imposed on vendors, which the vendors in turn choose to separately state to their purchasers, are included in the “receipt” on which sales tax is computed. N.J.A.C. 18:24-1.4(b).

**Teleconferencing Service** — The New Jersey Sales and Use Tax Act imposes tax on receipts from telecommunications services charged to a service address in this State N.J.S.A. 54:32B-3(f). Telecommunications means the act of originating or receiving messages or information through any kind of one-way or two-way communications. N.J.S.A. 54:32B-2(cc). The tax does not apply to calls that pass over or through New Jersey without originating or terminating here. The New Jersey Tax Court

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has held that services provided in connection with or by means of telecommunications are included within the meaning of the statute. See *Aetna Burglar & Fire Alarm Co. v. Director*, 16 N.J. Tax 584 (1997). For purposes of teleconferencing services, the Division treats the location of the person who has arranged for the teleconference call as the service address. When a New Jersey customer arranges for a teleconference, such charges are subject to tax under N.J.S.A. 54:32B-3(f).

The statute includes within the definition of "telecommunications" all services and equipment provided in connection therewith or by means thereof. N.J.S.A. 54:32B-2(cc). Thus, additional services such as call confirmation, call registration, call participation, call reminder, etc. are taxable as services performed in connection with the teleconferencing service when billed to a service address in New Jersey. For a more detailed discussion of teleconferencing, see *New Jersey State Tax News*, Winter 1992.

### ***Advertising Space in a Publication Distributed Free of Charge***

— The charge for the advertising space (e.g., half page, back cover) in an advertising publication that is distributed free of charge is not subject to tax. The charges for the materials and services that go into printing the publication are subject to tax. The publisher may simply pay tax on the purchase price of the publication (e.g. paper, printing, etc.) directly to the seller of the property and printing service. If the seller or printer of the publication is located outside of New Jersey and does not collect New

Jersey tax, the publisher is responsible for paying the 6% compensating use tax directly to the State with regard to the advertising material that is distributed in New Jersey. The tax is based on the amount paid for the printed material by the publisher. □

## ***In Our Courts***

### **Administration**

**Adequate Notice** – *Harry and Susan Dashoff v. Director, Division of Taxation*, decided December 3, 1999; Tax Court No. 004747-98.

The Division mailed to plaintiff's home address a notification of a pending audit examination of their records that was returned to the Division on December 5, 1995, due to it being unclaimed after three notices. On December 10, 1996, the Division sent plaintiff a notice regarding the basis of an estimated assessment that was also returned to the Division after being unclaimed pursuant to two notices. Thereafter, the Division sent a February 10, 1997, notice of assessment related to final audit determination to plaintiff's home address that was also returned to the Division as unclaimed from three delivery attempts. The notice of assessment determined that the plaintiff owed gross income taxes for tax years 1976 through 1995, excluding 1980 and 1994, for failure to file returns. After sending a June 30, 1997, notice of demand for payment of tax that also went unclaimed, the Division entered a certificate of debt (COD) against plaintiff on August 11, 1997, which the plaintiff acknowledged receiving.

On August 21, 1998, plaintiff filed a complaint with the Tax Court

*in our courts - from page 14*

seeking relief from the COD. On April 30, 1999, the Division moved to dismiss plaintiff's Tax Court complaint as being filed untimely. Plaintiff filed an opposition to the motion to dismiss and a cross motion to suppress the Division's defenses because: (1) the Division's motion to dismiss the complaint should have been filed within 90 days after service of the answer, (2) the Division's failure to answer interrogatories and produce documents on October 16, 1999, (3) the requirement of certified mail without also regular mailing is a constitutional violation and (4) the plaintiff did not receive the notices, and it would be inappropriate under the law and constitution to hold the plaintiff to the Division's estimated assessment.

As to the plaintiff's claim that the Division's motion to dismiss for untimely filing must be filed within 90 days of service of the answer, the Court ruled that the Division's motion was timely because Rule 4:6-2 permits a motion to dismiss for lack of subject matter jurisdiction to be made at any time in the pleadings.

Addressing the issue of whether the Division's motion should be suppressed because of the Division's failure to respond to interrogatories and produce documents, the Court dismissed plaintiff's claim because when a motion is made to dismiss for untimely filing the parties cease exchanging discovery during the pendency of the motion.

After examining the envelopes, the Court stated that they all showed the mailings were to plaintiff's last

*continued on page 15*

known address, there was adequate postage, and that there were several delivery attempts that were unclaimed and therefore returned to the Division. The Court ruled that the Division had complied with all statutes regarding mailing that required that notices of assessment be sent by certified mail to the plaintiff's last known address which is presumptive evidence of the plaintiff's receipt. Furthermore, the Court could not determine that either the statutory form of service was insufficient or that the statutory notice requirements violated the constitutional principles of procedural due process because the notice requirements are reasonably calculated to apprise the taxpayer of the pendency of an action and that there was an official mailing from the Division.

The Court held that the plaintiff's August 21, 1998, complaint was untimely as to the February 10, 1997, notice of assessment. The Court held that the Division complied with the statute by sending the notice of assessment by certified mail to plaintiff's home address, that failure to send the notice by regular mail does not invalidate the notice of assessment, and that the plaintiff failed to file a

timely appeal within 90 days of the notice of assessment. Furthermore, the Court noted that the date of the assessment, not the date of the COD, fixes the time for challenging the underlying tax liability.

**Responsible Person Status** – *Frank J. Miles v. Director, Division of Taxation*, decided April 24, 2000; Tax Court No. 6310-98.

At issue is whether plaintiff is a responsible person for employees' gross income tax (GIT) payroll withholdings that were not paid over to the Director and whether he is relieved of any liability by following his superior's directions not to make those payments.

Plaintiff was hired as the Chief Financial Officer, vice president and treasurer, of Accurate Information Systems, Inc. (AIS) reporting to the president, Mr. Stephen Yelity. Under plaintiff's employment contract, he was paid between \$90,000 and \$100,000 annually and initially granted 5% of the company's stock. Plaintiff had check signing authority and the Court found that he signed all company checks. Plaintiff had limited authority to hire and fire employees, signed, prepared and/or supervised the preparation of AIS

tax returns, and was involved in the financial aspects of the company. When plaintiff was hired, one of his responsibilities was to solve AIS's financial problems including tax liabilities owed to various states and the IRS. Plaintiff negotiated the IRS debt and either plaintiff or his corporation, MJ Financial Answers, lent AIS money, without any prospect of repayment, to make the final installment payment to the IRS.

The evidence showed that AIS payroll tax returns were filed but that tax checks were not remitted to the Division. The Court further found that vouchers authorizing payment of payroll taxes were prepared and that sometimes payroll tax checks were prepared and signed but not forwarded to the Division. Testimony indicated that Mr. Yelity directed plaintiff regarding which checks should be and should not be released over plaintiff's protests. Despite Mr. Yelity's testimony that the decision not to pay taxes was a joint decision, the Court found that it was specifically Mr. Yelity's decision not to pay the payroll taxes and that he decided who would be paid when there was not sufficient

*continued on page 16*

## **Enforcement Summary Statistics**

### **Fourth Quarter 2000**

Following is a summary of enforcement actions for the quarter ending December 31, 2000.

• Certificates of Debt:		• Jeopardy Seizures	6
Total Number	1,517	• Seizures	34
Total Amount	\$20,532,577	• Auctions	6
• Jeopardy Assessments	274	• Referrals to the Attorney General's Office	852

For more detailed enforcement information, see our Home Page at: <http://www.state.nj.us/treasury/taxation/>

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funds to pay all creditors.

The Court held that plaintiff was a responsible person and personally liable for AIS's nonpayment of payroll taxes. In making its determination, the Court applied the nine-factor test first articulated in *Cooperstein v. Director, Division of Taxation*, 13 N.J. Tax 68 (Tax 1993), *aff'd*, 14 N.J. Tax 192 (Appellate Division 1994) *certif. denied*, 140 N.J. 329 (1995). Then the Court compared the facts of this case with prior cases where individuals were found to be personally liable and opined that plaintiff had as great as or greater responsibility as they did.

Although the Court found that Mr. Yelity decided alone that payroll taxes would not be paid, the Court quoted Federal Circuit Court opinions that essentially stated that a superior's instructions not to pay taxes do not relieve an otherwise responsible person from his duty to ensure that taxes were paid. Furthermore, the Court noted that the issue of whether Mr. Yelity was a responsible person was not before the Court.

### Gross Income Tax

**Calculation of Resident Tax Credit** – *Mark and Donna Regante v. Director, Division of Taxation*, decided October 15, 1999; Tax Court No. 000496-1996.

Plaintiff claims that in calculating the resident tax credit that both as a matter of statutory interpretation and constitutionality the fraction must be calculated so that deductions allowable in the numerator are limited to those allowable in the denominator. In other words, plaintiff claims that the methodol-

ogy for determining income in the numerator should be identical with the methodology for determining income in the denominator.

Citing *Ambrose v. Director, Division of Taxation*, 198 N.J. Super. 546 (Appellate Division 1985), the Court held that the Division properly interpreted the statutory phrase "subject to tax" to refer to income actually taxed in the other state. Furthermore, the Court noted that the Division's regulations correctly interpret the statute.

Plaintiff's claim that the Director's interpretation of the statute results in a denial of equal protection was also rejected as the Court held the statute is constitutional. The Court noted that a taxpayer residing in New Jersey and working in Pennsylvania would pay a different amount of tax to New Jersey than if the taxpayer earned the same income by working in New York. However, the Court concurred with the holding in *Jenkins v. Director, Division of Taxation*, 4 N.J. Tax 127 (Tax 1982) that there was no equal protection violation because the credit is applicable equally to all New Jersey residents. Furthermore, the Court ruled that plaintiff had failed to show that the legislative classification pertaining to the resident tax credit was

irrational or arbitrary.

### Sales and Use Tax

**Calculation of the Average Annual Volume** – *Continental Gypsum Co. v. Director, Division of Taxation*, decided November 1, 2000; Tax Court No. 002150-99.

The sole issue revolved around the proper calculation of the base level of volume (BLV) to determine the use tax exemption attributable to purchases of natural gas. In general, an eligible person's exemption is based on their BLV, which is equal to their average annual volume (AAV) of non-utility natural gas units purchased and delivered between January 1, 1992, and December 31, 1995. The Director explained via Public Notice, 29 N.J. Reg. 5029(b), that the calculation of the AAV was based upon actual purchases between 1992 and 1995 divided by the number of years the eligible person was in operation between 1992 and 1995. Therefore, if no purchases were made in any calendar year between 1992 and 1995, then that year would not count in the computation. Similarly, if non-utility gas was purchased only in 1995, then the total 1995 purchases would

*continued on page 17*

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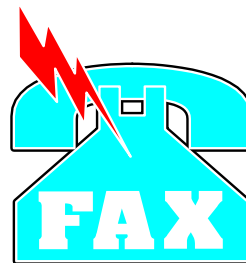
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equal the BLV.

In July 1995, plaintiff Continental Gypsum Co. (CGC) commenced purchasing and accepting deliveries of non-utility gas. CGC purchased 473,070 therms in 1995, 3,399,160 therms in 1996, and 4,820,116 therms in 1997. The Director determined that CGC's BLV was 473,070, the total 1995 purchases. First, CGC argued that average annual volume should be based upon its 461,411 therm full monthly production capacity, which was reached in October 1997, multiplied by twelve, or 5,536,932 therms. Alternatively, CGC claimed that its BLV should be 1,474,440 therms, its December 1995 purchases of 122,870 therms multiplied by twelve.

In upholding the Director's Final Determination, the Court reasoned that the Director's interpretation of calculating BLV was not unreasonable. The Court dismissed CGC's first claim by ruling that the statute was clear that any year subsequent to 1995 could not be used in calculating the BLV. Addressing CGC's second claim, the Court ruled that "CGC had failed to demonstrate that the Director's interpretation was unreasonable and furthermore that the Director's interpretation was more reasonable than either of CGC's alternative proposals." The Court stated that the "Director's construction is reasonable, as it is surely not 'plainly unreasonable.'" Although the Court noted that there were several other reasonable alternatives that could be employed to calculate the BLV, it lacked authority to implement a method of calculation more reasonable than the Director's method.

CGC also claimed that the Director's Public Notice was *de facto* rulemaking that is prohibited under the Administrative Procedures Act. The Court found that this Notice was essential because the statute could be interpreted several different ways. The Court noted that although an assemblyman had contested the Director's method of calculation, the legislation was not amended. In distinguishing *Metromedia v. Director, Division of Taxation*, 97 N.J. 313 (1984), the Court held that there was no requirement that the Director's pre-audit determination be adopted by a formal regulation. □

## ***In Our Legislature***

### **Corporation Business Tax**

***Phase-out of Tax on S Corporation Income*** — P.L. 2001, c.23 (signed into law on February 2, 2001) provides for a three-year phase-out of the corporation business tax on the regular income of S corporations with an annual income in excess of \$100,000.

The first year of the phase-out begins with privilege periods ending on or after July 1, 1998 but on or before June 30, 2001. For privilege periods ending on or after July 1, 2003, no tax is imposed.

For S corporations with income of \$100,000 or less, tax is imposed at .5% for privilege periods ending on or after July 1, 1998, but on or before June 30, 2001. For periods ending on or after July 1, 2001, no tax is imposed.

The law also provides that the adjusted minimum tax amount shall be rounded to the next highest multiple of \$10. This Act became effective immediately.

*in our legislature - from page 17*

### **Miscellaneous**

***Energy Assistance Programs*** — P.L. 2001, c.24 (signed into law on February 2, 2001) provides for the appropriation of sales tax revenues to increase benefits under various energy assistance programs. This legislation became effective immediately.

***Administrative Procedures Act*** — P.L. 2001, c.5 (signed into law on January 16, 2001) revises New Jersey's Administrative Procedures Act to enhance access to the rule-making process. The legislation requires regulatory agencies to publish a calendar of their rule-making plans, provides for an extension in the time allowed for comment on proposed rules, and ensures official response to members of the public petitioning an agency to adopt or change a rule.

The law also provides that, in reviewing an administrative law judge's decision, an agency head shall apply an elevated standard in deciding whether to reject or modify findings of fact as to the credibility of lay witness testimony, requires each rule-making agency to publish a table of specified matters that are of interest to regulated parties, and requires that administrative rules expire after five years.

This legislation takes effect on July 1, 2001, but does not apply to any rule proposed in the New Jersey Register, or to any contested case filed prior to the effective date.

***Uniform Partnership Act*** — P.L. 2000, c.161 (signed into law on December 7, 2000) enacts the

*continued on page 18*

“Uniform Partnership Act (1996)” as developed by the National Conference of Commissioners of Uniform State Laws and approved

by the American Bar Association House of Delegates.

The law also makes certain changes to the Uniform Act which

were recommended by the review committee of the New Jersey Bar Association. This legislation became effective on December 8, 2000. □

# tax calendar

## april

SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

### April 10

- CWIP-1** Cigarette Tax—Informational report by wholesalers
- CWIP-2** Cigarette Tax—Informational report by wholesalers

### April 16

- CBT-100/ CBT-100S** Corporation Business Tax—Annual return for accounting period ending December 31
- CBT-150** Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year
- HR-1040** Homestead Rebate—Application

continued

### April 16 - continued

- NJ-1040/ NJ-1040EZ** Gross Income Tax—Resident return for calendar year filers
- NJ-1040NR** Gross Income Tax—Nonresident return for calendar year filers
- NJ-1041** Gross Income Tax—Fiduciary return for calendar year filers
- NJ-1065** Gross Income Tax—Partnership return for calendar year filers
- NJ-1040ES** Gross Income Tax—Declaration of Estimated Tax, Voucher 1 for calendar year filers

### April 20

- CR-1 & CNR-1** Cigarette Tax—Monthly report of cigarettes sold or used by distributors and manufacturers
- MSS-1** Cigarette Tax—Monthly report by manufacturers of special shipments of taxable cigarettes into New Jersey
- GA-1D** Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used
- GA-1J** Motor Fuels Tax—Jobber's monthly report of gallons of fuel sold or used
- GA-1X** Motor Fuels Tax—Importer's monthly report of gallons of fuel imported

continued

### April 20 - continued

- MFT-10** Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month
- SCC-5** Spill Compensation and Control Tax—Monthly return
- ST-20** New Jersey/New York Combined State Sales and Use Tax—Quarterly return
- ST-50** Sales and Use Tax—Quarterly return
- ST-250** Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return
- ST-350** Cape May County Tourism Sales Tax—Monthly return
- ST-450** Sales and Use Tax—Salem County—Quarterly Return
- TP-20** Tobacco Products Wholesale Sales and Use Tax—Monthly return
- UZ-50** Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

### April 25

- PPT-40** Petroleum Products Gross Receipts Tax—Quarterly return

### April 30

- NJ-927 & NJ-927-W** Gross Income Tax—Employer's quarterly report

## may

SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26

27	28	29	30	31		
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### May 10

- CWIP-1** Cigarette Tax—Informational report by wholesalers
- CWIP-2** Cigarette Tax—Informational report by wholesalers

### May 15

- CBT-100** Corporation Business Tax—Annual return for accounting period ending January 31
- CBT-150** Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year

continued

**May 15 - continued**

**NJ-500**     **Gross Income Tax—**  
Employer's monthly remittance

**May 21**

**CR-1 & CNR-1**     **Cigarette Tax—**Monthly report of cigarettes sold or used by distributors and manufacturers

**MSS-1**     **Cigarette Tax—**Monthly report by manufacturers of special shipments of taxable cigarettes into New Jersey

**GA-1D**     **Motor Fuels Tax—**Distributor's monthly report of gallons of fuel sold or used

**GA-1J**     **Motor Fuels Tax—**Jobber's monthly report of gallons of fuel sold or used

**GA-1X**     **Motor Fuels Tax—**Importer's monthly report of gallons of fuel imported

**MFT-10**     **Motor Fuels Tax—**Monthly report by seller-user of special fuels for sales and/or use in the previous month

**SCC-5**     **Spill Compensation and Control Tax—**Monthly return

*continued*

**May 21 - continued**

**ST-21**     **New Jersey/New York Combined State Sales and Use Tax—**Monthly return

**ST-51**     **Sales and Use Tax—**Monthly remittance

**ST-250**     **Combined Atlantic City Luxury Tax/State Sales Tax—**Monthly return

**ST-350**     **Cape May County Tourism Sales Tax—**Monthly return

**ST-451**     **Sales and Use Tax—Salem County—**Monthly Return

**TP-20**     **Tobacco Products Whole-sale Sales and Use Tax—** Monthly return

**UZ-50**     **Combined State Sales Tax/ Urban Enterprise Zone Sales Tax—**Monthly return

**May 25**

**PPT-41**     **Petroleum Products Gross Receipts Tax—**Monthly return

*june*

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
2						1	2
0	3	4	5	6	7	8	9
0	10	11	12	13	14	15	16
1	17	18	19	20	21	22	23
	24	25	26	27	28	29	30

**June 11**

**CWIP-1**     **Cigarette Tax—**Informational report by wholesalers

**CWIP-2**     **Cigarette Tax—**Informational report by wholesalers

**June 15**

**CBT-100**     **Corporation Business Tax—**  
Annual return for accounting period ending February 28

*continued*

**June 15 - continued**

**CBT-150**     **Corporation Business Tax—**  
Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year

**NJ-500**     **Gross Income Tax—**  
Employer's monthly remittance

**June 20**

**CR-1 & CNR-1**     **Cigarette Tax—**Monthly report of cigarettes sold or used by distributors and manufacturers

**MSS-1**     **Cigarette Tax—**Monthly report by manufacturers of special shipments of taxable cigarettes into New Jersey

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**GA-1X**     **Motor Fuels Tax—**Importer's monthly report of gallons of fuel imported

*continued*

**June 20 - continued**

**MFT-10**     **Motor Fuels Tax—**Monthly report by seller-user of special fuels for sales and/or use in the previous month

**SCC-5**     **Spill Compensation and Control Tax—**Monthly return

**ST-21**     **New Jersey/New York Combined State Sales and Use Tax—**Monthly return

**ST-51**     **Sales and Use Tax—**Monthly remittance

**ST-250**     **Combined Atlantic City Luxury Tax/State Sales Tax—**Monthly return

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**ST-451**     **Sales and Use Tax—Salem County—**Monthly Return

**TP-20**     **Tobacco Products Whole-sale Sales and Use Tax—** Monthly return

**UZ-50**     **Combined State Sales Tax/ Urban Enterprise Zone Sales Tax—**Monthly return

**June 25**

**PPT-41**     **Petroleum Products Gross Receipts Tax—**Monthly return

## *from the director's desk*

As this issue of the *State Tax News* went to press, legislation was pending which would affect both the NJ SAVER and Homestead Rebate Programs. The legislation, referred to as "Property Tax Relief Now!" by Acting Governor Donald DiFrancesco, has already passed the Senate. It accelerates the phase-in of the NJ SAVER rebate and doubles the amount to be paid this year to an average of \$500. The legislation would also increase the maximum homestead rebate amount for senior and disabled citizens from \$500 to \$750, and index the maximum rebate amount to inflation. In addition, the legislation accelerates the homestead rebate amount for tenants who are not 65 or older or disabled to \$100, and also indexes that amount to inflation.

Additional information regarding the legislation will be available on the Division's Web site ([www.state.nj.us/treasury/taxation/](http://www.state.nj.us/treasury/taxation/)) once it is signed into law.